

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #5	CCRB Case #: 201501778	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/18/2015 10:00 AM	Location of Incident: in the vicinity of 94th Avenue and 222nd Street	Precinct: 105	18 Mo. SOL 8/18/2016	EO SOL 8/18/2016	
Date/Time CV Reported Fri, 03/13/2015 10:27 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/13/2015 10:27 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Paul Chierico	30661	936344	105 PCT
2. POM Patrick Cabrera	03395	947992	105 PCT
3. POM Chris Serrao	24678	931986	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Leonardo Tortorici	01333	907461	105 PCT
2. POF Ivelisse Negron	14942	940503	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Paul Chierico	Abuse: PO Paul Chierico stopped § 87(2)(b)	
B.POM Patrick Cabrera	Abuse: PO Patrick Cabrera stopped § 87(2)(b)	
C.POM Paul Chierico	Abuse: PO Paul Chierico stopped § 87(2)(b)	
D.POM Patrick Cabrera	Abuse: PO Patrick Cabrera stopped § 87(2)(b)	
E.POM Paul Chierico	Abuse: PO Paul Chierico stopped § 87(2)(b)	
F.POM Patrick Cabrera	Abuse: PO Patrick Cabrera stopped § 87(2)(b)	
G.POM Paul Chierico	Force: PO Paul Chierico used physical force against § 87(2)(b)	
H.POM Patrick Cabrera	Force: PO Patrick Cabrera used physical force against § 87(2)(b)	
I.POM Paul Chierico	Abuse: PO Paul Chierico prevented § 87(2)(b) from recording an incident.	
J.POM Paul Chierico	Force: PO Paul Chierico used physical force against § 87(2)(b)	
K.POM Paul Chierico	Discourtesy: PO Paul Chierico spoke discourteously to § 87(2)(b)	
L.POM Chris Serrao	Force: PO Chris Serrao used physical force against § 87(2)(b)	

Case Summary

This case was not closed within 90 days for the following reasons: The CCRB received this case on March 13, 2015, which is 25 days after the incident date. The CCRB established contact with § 87(2)(b) on March 13, 2015, after which, he rescheduled his appointment three times in two weeks, not appearing at the CCRB until March 30, 2015. Additionally, it was ascertained on April 21, 2015 that GO-15 tapes from a concurrent Patrol Borough Queens South Investigation existed, but the NYPD did not provide the tapes until June 9, 2015, significantly delaying officer interviews.

On February 18, 2015, at approximately 10:00 a.m. § 87(2)(b) and his friends § 87(2)(b) and § 87(2)(b) were on their way to the 105th Precinct stationhouse to file a police report following a car accident. They were walking at the intersection of 222nd Street and 94th Avenue. PO Patrick Cabrera and PO Paul Chierico stopped § 87(2)(b) and § 87(2)(b) (**Allegation A-F**). § 87(2)(b) angry at being stopped, allegedly pushed PO Chierico. PO Chierico and PO Cabrera took § 87(2)(b) to the ground (**Allegation G and Allegation H**). While § 87(2)(b) was on the ground, PO Frank Serrao and PO Ivelisse Negrón, also of the 105th Precinct, arrived on the scene to assist in handcuffing him. While § 87(2)(b) was on the ground, PO Chierico allegedly punched him once in the face, and several times in the back (**under Allegation G**). At the time, § 87(2)(b) was taking video of the incident, and PO Chierico took § 87(2)(b) to the ground, preventing him from recording (**Allegations I and J**). PO Chierico also told § 87(2)(b) to “shut the fuck up” (**Allegation K**). Just before § 87(2)(b) was transported to the 105th Precinct stationhouse, PO Serrao allegedly pushed his head into the side of a van (**Allegation L**). § 87(2)(b) was arrested for § 87(2)(b); § 87(2)(b) was arrested for § 87(2)(b); § 87(2)(b) was arrested for § 87(2)(b) (Board Review 1, 2, and 3).

There was no video footage available for this incident.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation due to § 87(2)(b) s, § 87(2)(b) s, and § 87(2)(b) s arrests (Board Review 1, 2, and 3).
- A request to the Comptroller’s office for a Notice of Claim for § 87(2)(b) and § 87(2)(b) yielded negative results (Board Review 4).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)]
[§ 87(2)(b)]
[§ 87(2)(b)]

Civilian and Officer CCRB Histories

- This is the first complaint filed by or involving § 87(2)(b) or § 87(2)(b) (Board Review 6).
- PO Chierico has been a member of service for 10 years. He has 32 prior CCRB allegations filed against him (Board Review 7). Three of these, a retaliatory arrest, damage of a cellphone, and physical force, all in CCRB case 201407041, have been

substantiated. This case is with the APU, where administrative charges are currently pending. § 87(2)(g)

- In case 201201441, a civilian alleged that PO Chierico damaged his cellphone in the stationhouse after the civilian claimed that he took an audio recording of an incident. This allegation was closed as unsubstantiated. He has had four previous cases, 201407041, 201201441, 201016081, and 200514807, that involve the seizure or damage of cell phones, but in only one of them, 201201441, has a civilian claimed to have used the cellphone to record the incident. This is the first CCRB complaint filed against PO Chierico under investigation since May 2015, § 87(2)(g)
- PO Chierico has had seven previous allegations of physical force filed against him. One in case 201407041, was closed as substantiated. One, also in case 20407041, was closed as unsubstantiated. Two, in cases 201016081 and 201207357, were closed as victim uncooperative. Two, in cases 200514807 and 201005406, were closed as exonerated. One, in case 201201441, was closed as unfounded.
- PO Chierico has six prior allegations of discourteous language filed against him. Two, in cases 201212026 and 201407041, were closed as unsubstantiated. One, in case 201016801, was closed as victim uncooperative. Three, in case 200514807, were closed as unfounded.
- PO Cabrera has been a member of service for six years. He has had four previous CCRB allegations filed against him (Board Review 8) § 87(2)(g)
○ One force allegation was substantiated in case 201407041. Charges are currently pending. § 87(2)(b) Two allegations of physical force, in case 201202218 and 201301027, were closed as unsubstantiated and victim uncooperative, respectively.
- PO Serrao has been a member of service for 13 years. He has one prior CCRB allegation, a vehicle search in case 201001444, filed against him (Board Review 9). It was closed as unsubstantiated. § 87(2)(g)

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g)
- § 87(2)(g)
- § 87(2)(g)
- § 87(2)(g)

§ 87(2)(g)

Allegation A—Abuse of Authority: PO Paul Chierico stopped § 87(2)(b)

Allegation B—Abuse of Authority: PO Patrick Cabrera stopped § 87(2)(b)

It is undisputed that PO Chierico and PO Cabrera approached and stopped § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) claimed that PO Chierico approached him when he was on his way to the 105th Precinct stationhouse, where he was accompanying § 87(2)(b) and § 87(2)(b) to obtain an accident report after an unrelated incident in a taxi.

PO Chierico and PO Cabrera both testified that they observed § 87(2)(b) engage in a hand-to-hand marijuana transaction. PO Cabrera claimed that he saw § 87(2)(b) purchase marijuana from 45 feet away, across Jamaica Avenue, which he testified has four lanes of traffic (Board Review 13). He said that the marijuana was in a small, half-full Ziploc bag. PO Chierico said that he saw the transaction occur from 20 feet away, but he could not remember whether § 87(2)(b) was buying or selling (Board Review 14). He also said that the marijuana was in a plastic baggie. Neither PO Cabrera nor PO Chierico knew where § 87(2)(b) placed the marijuana after allegedly purchasing or selling it.

PO Chierico stated that he stopped § 87(2)(b) just after the suspected transaction occurred. His intent was to discuss the transaction that he witnessed, and verify that § 87(2)(b) was carrying marijuana. PO Chierico said that he told all of the individuals, § 87(2)(b) and § 87(2)(b) to stop. PO Chierico denied seeing any bulges on any of the individuals.

PO Cabrera stated that § 87(2)(b) and § 87(2)(b) stopped of their own volition when they were approached by officers. PO Cabrera clarified that § 87(2)(b) was not under arrest upon the officers' approach (Board Review 13).

Additionally, PO Cabrera testified that he saw a waist-high, square bulge on § 87(2)(b)'s person when he first observed him (Board Review 13).

§ 87(2)(b)'s stop and frisk report indicates that PO Cabrera suspected him of engaging in a drug transaction, and also that he gave false or evasive answers to police questions. Additionally, he was observed in an area prone to drug transactions, and had a wallet-shaped bulge on his person. These are all of the listed justifications for the stop (Board Review 19). According to this document, § 87(2)(b) was stopped three minutes after he was observed.

None of the other officers interviewed knew why § 87(2)(b) was stopped (Board Review 15, 16, and 17). PO Ivelisse Negron stated that she was instructed to search for something at the scene of the incident by Sgt. Robert Morabito, but no substances were recovered (Board Review 16).

PO Cabrera prepared all voucher paperwork for the arrests that occurred as a result of this incident. He filled out a voucher for cash that § 87(2)(b) had on his person, and he also generated a voucher for a forged credit card that § 87(2)(b) was found to have been carrying (Board Review 13). He did not complete a voucher for any marijuana found on § 87(2)(b)'s person. Drugs similarly do not appear on § 87(2)(b)'s arrest report (Board Review 2).

Per People v. de Bour 40 N.Y. 2d 210 (1976), officers must have reasonable suspicion that an individual has participated in criminal activity before stopping them (Board Review 20).

§ 87(2)(g)

Both PO Chierico and PO Cabrera claim to have witnessed § 87(2)(b) engaging in a hand-to-hand marijuana transaction, § 87(2)(g)

PO Cabrera allegedly saw the exchange from a distance of 45 feet, through which flowed four lanes of traffic. He said that § 87(2)(b) purchased a small plastic bag of marijuana from an unknown individual. § 87(2)(g)

PO Chierico claimed to have had a closer view of the hand-to-hand, only ten to 20 feet—and he stated that his view was unobstructed—but he could not remember whether § 87(2)(b) bought or sold the marijuana. PO Chierico's testimony also included an unknown who was individual also involved in the alleged transaction.

Neither officer could recall what happened to the other party in the alleged sale, only that he was not § 87(2)(b) or § 87(2)(b). Furthermore, no drugs or cash were documented to have been taken from § 87(2)(b)'s person after his arrest. § 87(2)(g)

The Stop and Frisk Report prepared by PO Cabrera lists a wallet-shaped bulge. PO Cabrera said that he saw a square-shaped bulge, and PO Chierico did not recall seeing bulges. § 87(2)(g)

§ 87(2)(g)

Both officers stated that he motioned towards his waistband, but neither could give a description of the gesture that § 87(2)(b) made to do so. Additionally, PO Cabrera stated that § 87(2)(b) stopped reaching for his waistband when he told him to do so, but PO Chierico said that he did not.

§ 87(2)(g)

Allegation C—Abuse of Authority: PO Paul Chierico stopped § 87(2)(b)

Allegation D—Abuse of Authority: PO Patrick Cabrera stopped § 87(2)(b)

Allegation E—Abuse of Authority: PO Paul Chierico stopped § 87(2)(b)

Allegation F—Abuse of Authority: PO Patrick Cabrera stopped § 87(2)(b)

It is undisputed that PO Cabrera and PO Chierico approached and stopped § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) claimed that PO Cabrera and PO Chierico told him, § 87(2)(b) and § 87(2)(b) not to move when the officers approached. § 87(2)(b) stated that the officers told him to

several more times in the back, and an officer pinned him down with a knee on his back, because he was squirming in the snow (Board Review 11).

Both § 87(2)(b) and § 87(2)(b) corroborated that § 87(2)(b) was taken to the ground (Board Review 10 and 12). § 87(2)(b) said that an officer held his knee on § 87(2)(b)'s back (Board Review 10). None of the other force was corroborated by § 87(2)(b) or § 87(2)(b). § 87(2)(b) said that while § 87(2)(b) was on the ground, he responded to commands to give them his hands by saying that he would give them his hands once the officers told him why they were arresting him (Board Review 10).

PO Chierico testified that when he told § 87(2)(b) and § 87(2)(b) to take their hands out of their waistbands, § 87(2)(b) pushed him in the chest with two hands. PO Chierico reached for § 87(2)(b)'s hands in order to handcuff him. § 87(2)(b) resisted being handcuffed by pushing multiple times at PO Chierico's chest again (Board Review 14). PO Cabrera testified that when PO Chierico tried to get § 87(2)(b) to turn around to be handcuffed, § 87(2)(b) pushed PO Chierico with both hands. Both officers also stated that neither of them took § 87(2)(b) to the ground, but that all parties—§ 87(2)(b), PO Chierico, and PO Cabrera—fell to the ground (Board Review 13).

PO Serrao claimed that when he came on the scene, § 87(2)(b) was already on the ground, and his hand looked “dangerously close” to PO Cabrera's gun (Board Review 15). No other officer alleged this (Board Review 13, 14, 16, and 17). PO Serrao denied that § 87(2)(b) was struck. PO Serrao could not recall whether there was incidental contact made with § 87(2)(b)'s face (Board Review 15).

PO Negron and PO Tortorici could not remember whether § 87(2)(b) was struck by an officer or not (Board Review 16 and 17). PO Negron admitted to holding § 87(2)(b)'s feet. PO Chierico, PO Serrao, PO Negron, and PO Tortorici did not recall whether any officer's knee was on § 87(2)(b)'s back (Board Review 15, 16, and 17).

According to Patrol Guide Procedure 203-11, officers must restrict their use of force to the minimum amount necessary to overcome resistance (Board Review 22).

§ 87(2)(g)

Allegation I—Abuse of Authority: PO Paul Chierico prevented § 87(2)(b) from recording an incident.

Allegation J—Force: PO Paul Chierico used physical force against § 87(2)(b)

§ 87(2)(b) states that when he was attempting to record § 87(2)(b) being handcuffed, he was taken to the ground (Board Review 10). All of the other civilians corroborated that PO Chierico took § 87(2)(b) to the ground (Board Review 11 and 12).

PO Chierico stated that § 87(2)(b) came within three feet of him, and was not trying to record the incident. PO Chierico further claimed that § 87(2)(b) pushed him hard. He stated that when he grabbed § 87(2)(b)'s arm to handcuff him, both of them fell to the ground together. PO Chierico denied that he prevented any civilian from recording the incident (Board Review 14). PO Cabrera similarly did not remember any civilian recording an incident, and could not account for where § 87(2)(b) was at the time that the incident occurred. PO Cabrera did not mention § 87(2)(b) pushing PO Chierico, and he did not participate in placing § 87(2)(b) under arrest (Board Review 13).

Neither PO Serrao, PO Negron, nor PO Tortorici remembered a civilian recording the incident (Board Review 15, 16, and 17). Both PO Serrao and PO Negron participated in handcuffing § 87(2)(b) and they both denied that any civilian was close enough to interfere while they were doing so (Board Review 15 and 16). PO Serrao denied that force was used in arresting § 87(2)(b) (Board Review 15).

While § 87(2)(b) was charged with assaulting a police officer after allegedly pushing PO Chierico, no similar charge was brought against § 87(2)(b) nor is there any mention of this alleged push of PO Chierico in his arrest report (Board Review 1).

Patrol Guide Procedure 208-03 states that individuals recording an arrest are not automatically subject to an arrest, provided that they are not interfering (Board Review 24). FINEST Message SER#: 9881632 further clarifies that officers may not obstruct any non-intervening individual from recording an incident (Board Review 25). Patrol Guide Procedure 203-11 limits force to the minimum amount necessary to subdue a civilian for the purpose of overcoming resistance (Board Review 22).

§ 87(2)(g)
PO Chierico has had four prior CCRB allegations which pertain to the damage or seizure of cellphones. One of these complaints, in case 201407041, was substantiated, and administrative charges are currently pending. In only one of these cases, 201201441, did a civilian allege that PO Chierico tampered directly with a recording, in this case, an audio recording on a cell phone. In the other four cases, since the CCRB did not plead prevention of recording before May 2015, it was unclear as to whether PO Chierico intended to impede recording.

§ 87(2)(g). CCRB case 201407041 also has a force allegation against PO Chierico which was substantiated, and for which additional administrative charges are pending. PO Chierico has had seven allegations of force brought against him, three of which have been unfounded or exonerated. § 87(2)(g)

Both PO Cabrera and PO Chierico testified that § 87(2)(b) pushed PO Chierico, and PO Cabrera included this push on § 87(2)(b)'s arrest report. § 87(2)(b) was subsequently charged with this push. Only PO Chierico stated that § 87(2)(b) pushed him. § 87(2)(b)'s alleged push does not appear on his arrest report, nor did it resurface in subsequent criminal proceedings. That § 87(2)(b) was not charged with this push indicates that it did not occur in the manner that PO Chierico testified that it did.

§ 87(2)(g)

§ 87(2)(g)

Allegation K—PO Paul Chierico spoke discourteously to § 87(2)(b)

Whether PO Chierico spoke discourteously to § 87(2)(b) is in dispute. § 87(2)(b) alleged that PO Chierico told him to “shut the fuck up,” while he was on the ground (Board Review 10). Neither § 87(2)(b) nor § 87(2)(b) corroborated the profanity in their in-person statements (Board Review 11 and 12).

PO Chierico denied that he told § 87(2)(b) to “shut the fuck up”, or made any other profane remarks (Board Review 14). PO Cabrera did not hear any officer telling any civilian to “shut the fuck up” (Board Review 13). PO Negron and PO Tortorici also did not hear PO Chierico making these alleged statements.

PO Chierico § 87(2)(g)
 [REDACTED] has no substantiated discourtesy allegations filed against him. Of the six discourtesy allegations filed against him, two have been unfounded.

§ 87(2)(g)

Allegation L—Force: PO Chris Serrao used physical force against § 87(2)(b)

§ 87(2)(b) claimed that when he was being led to a van to be transported to the 105th Precinct, PO Serrao pushed his head into a van (Board Review 11). § 87(2)(b) corroborated this allegation, but § 87(2)(b) did not (Board Review 10 and 12).

PO Serrao denied that this action occurred (Board Review 15). None of the other officers recalled that § 87(2)(b)'s head was pushed into a van (Board Review 14, 16, and 17).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
§ 87(2)(b) [REDACTED] s arrest photo does not show any injuries on his face that such a push may have caused, though he claimed that a slight contusion developed as a result (Board Review 26). § 87(2)(g) [REDACTED]

§ 87(2)(b) did not seek medical treatment as a result of this incident.

§ 87(2)(g)

Squad #5

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date